



## Reform in Ukraine seriously undermined the independence of the judiciary

In today's **Chamber judgment**<sup>1</sup> in the case of [Gumenyuk and others v. Ukraine](#) (application no. 11423/19) the European Court of Human Rights held, unanimously, that there had been:

**a violation of Article 6 § 1 (right of access to court) of the European Convention on Human Rights, and**

**a violation of Article 8 (right to respect for private life).**

The case concerned judges of the former Supreme Court of Ukraine who were prevented from exercising their functions, without having ever been formally dismissed, because of judicial reform and legislative amendments that took place in 2016.

The Supreme Court of Ukraine was liquidated and a new one established in December 2017, in which the posts of judge were filled by way of competition. Even though the Constitutional Court of Ukraine considered that the applicants should be able to continue to work as judges of the new Supreme Court, they had not been allowed to do so. They complained that they had been removed from their functions in breach of the guarantees of the judicial profession and contrary to the European Convention.

The Court found that the right of access to a court was a fundamental procedural right for the protection of members of the judiciary, and the applicants should, in principle, have been able to go to court with their allegations.

In addition, the Court considered that being prevented from exercising as Supreme Court judges since December 2017, despite a Constitutional Court ruling in their favour, had significantly affected their private lives and constituted an interference with their right to respect for private life. That interference had not been lawful within the meaning of the European Convention as it went against the principle of irremovability of judges which was fundamental for judicial independence and public trust in the judiciary.

### Principal facts

The applicants are eight Ukrainian nationals who were born between 1954 and 1963 and live in Kyiv.

Between 1994 and 2008, the applicants were all elected to posts of judges of the Supreme Court of Ukraine for an indefinite length of time.

Following the Maidan protests -- large anti-government demonstrations throughout Ukraine in late 2013 and early 2014 which resulted in the departure of the former President and a change of power in Ukraine, -- amendments to the Constitution of Ukraine regarding the organisation and functioning of the domestic judiciary were adopted by Parliament in June 2016. Simultaneously, a new law on the judiciary and the status of judges ("the Judiciary Act 2016") came into effect on 30 September 2016. The aim of the bill was to optimise the judicial system and to introduce appropriate

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: [www.coe.int/t/dghl/monitoring/execution](http://www.coe.int/t/dghl/monitoring/execution).

mechanisms for renewing judicial staff in Ukraine. The Supreme Court was to be the single supreme judicial authority, with powers of cassation, and whose judges were to be appointed on a competitive basis. The Judiciary Act 2016 provided that the judges of the former Supreme Court had the right to participate in the competition for the new Supreme Court.

On 3 October 2016 the plenary of the former Supreme Court challenged the provisions of the Judiciary Act 2016 before the Constitutional Court. It argued, among other things, that its liquidation, preventing judges from exercising their judicial functions, would be contrary to the Constitution.

In November 2016 a competition for 120 judges' posts for the new Supreme Court was announced, and 846 candidates participated in it, including 17 of the 21 judges of the former Supreme Court. Seven of the eight applicants sat the competition but not one of them succeeded. The new Supreme Court began functioning on 15 December 2017.

On 18 February 2020, the Constitutional Court found that under the Constitution only one supreme judicial body existed. It also found, in view of the principle of irremovability, that the judges of the "old" Supreme Court should continue performing their functions as judges of the "new" Supreme Court.

In June 2020, a draft law was introduced in Parliament proposing that the judges of the former Supreme Court be enrolled as judges in the new Supreme Court. As of June 2021, this law had not yet been adopted and the applicants had not been able to resume their duties as Supreme Court judges.

## Complaints, procedure and composition of the Court

Relying on Article 6 § 1 (right of access to court), the applicants complained in particular that they could not challenge their being prevented from exercising their judicial functions as a result of the legislative amendments in 2016.

Under Article 8 (right to private life), they complained that not being able to exercise their judicial functions as judges of the Supreme Court amounted to an unlawful and groundless interference with their right to respect for private life.

The application was lodged with the European Court of Human Rights on 28 February 2019.

Judgment was given by a Chamber of seven judges, composed as follows:

Síofra O'Leary (Ireland), *President*,  
Mārtiņš Mits (Latvia),  
Ganna Yudkivska (Ukraine),  
Lətif Hüseynov (Azerbaijan),  
Jovan Ilievski (North Macedonia),  
Lado Chanturia (Georgia),  
Mattias Guyomar (France),

and also Victor Soloveytchik, *Section Registrar*.

## Decision of the Court

### [Article 6 § 1](#)

The Court was aware of the complicated background and context of the judicial reform in Ukraine and considered that it was not its role to judge its goals and appropriateness or determine whether it was justified under Ukrainian constitutional law. However, the Court had to examine whether the

applicants' rights under the Convention had been affected by the way in which the reform was actually implemented.

All the applicants were entitled under the domestic law to remain judges until their retirement in the absence of any of the exceptional grounds for early termination of office set out in the Constitution. The applicants, while not being formally dismissed, had been prevented from exercising their judicial functions, despite the Constitutional Court confirming the validity of their tenure. In addition, the Constitutional Court had made it clear that the applicants had a right to remain judges of the highest judicial body.

Indeed, the Court was particularly attentive to the protection of members of the judiciary against measures affecting their status or career that could threaten their judicial independence and autonomy. It recalled the special role the judiciary had to play in a democratic society, and their duty to provide checks on government wrong-doing and abuse of power.

The right of access to a court was one of the fundamental procedural rights for the protection of members of the judiciary and the applicants should, in principle, have been able to take their claim to court on an individual level. However, there was no right of individual petition to the Constitutional Court, which was the sole court empowered to repeal a statutory provision, and the courts of general jurisdiction in Ukraine did not have the power to set aside laws as being unconstitutional. It was hard to see how the aims of reorganising the high courts in Ukraine, namely ensuring a fair domestic judiciary and speeding up of proceedings, could be achieved by restricting the applicants' access to court.

The Court held, therefore, that there had been a violation of Article 6 § 1 of the Convention as regards the applicants' right of access to a court.

#### Article 8

The Court recognised that the legislative amendments in 2016 and their subsequent implementation had prevented the applicants from exercising their judicial functions as Supreme Court judges without their being formally dismissed. They had been deprived of the opportunity to continue their judicial work and pursue professional and personal development goals. The Court considered that the measures had significantly affected the applicants' private lives, constituting an interference with their right to respect for private life.

In this regard, the Court took note of the Constitutional Court's ruling of 18 February 2020 in which it declared that the relevant legislative measures had been unconstitutional. That court found that the judges of the former Supreme Court had to be able to continue to exercise their powers as judges of the new Supreme Court and that making a difference between judges was not consistent with the principle of irremovability of judges which was a constitutional guarantee of their independence.

Despite that ruling, the issue of the applicants' resumption of their judicial functions was still under examination by Parliament as of June 2021. Moreover, since December 2017, when the Supreme Court had started to operate, the applicants had not been able to exercise their judicial functions as Supreme Court judges. Accordingly, there had been a violation of Article 8 of the Convention.

#### Just satisfaction (Article 41)

The Court held that Ukraine was to pay each applicant 5,000 euros (EUR) in respect of non-pecuniary damage.

*The judgment is available only in English.*

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**The European Court of Human Rights** was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.